IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8883 OF 2004

Kamlakant Yashwant Arolkar ... Petitioner

v/s

Smt Hemlata Raghunath Pednekar ... Respondent

Mr G.V. Nagarsheth for Petitioner.

Mr A.S. Khandeparkar for Respondent.

CORAM : D.K. DESHMUKH J.

DATE : 20TH JULY 2005.

P.C. :-

1. Rule, returnable forthwith. Heard finally by consent of parties.

2. It appears that the will, for production of which witness summons was requested to be issued by the defendant, was a registered document and therefore, the Sub-Registrar of Documents was being summoned as a witness to produce the document. The Trial Court has however, declined to issue witness summons to the Sub-Registrar of Documents on the ground that the defendant has relied on the document and therefore, the defendant is duty bound to produce the same. If it was a registered will in the custody of the Sub-Registrar of Documents, the defendant could not have produced it and the only way was to call for the document by issuing witness summons to the Sub-Registrar or an Officer subordinate to him for production of the document. The impugned order therefore clearly suffers from non-application of mind and therefore, is liable to be set aside. In the result therefore, the present petition succeeds and is allowed. The order impugned in the petition is set aside. The Trial Court is directed to issue witness summons to the Sub-Registrar for

production of the document. Petition is disposed off.

No order as to costs.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.